




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 8, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
TEXANS FOR RUDY IZZARD

Attached please find a copy of the final audit report and related documents on Texans for Rudy Izzard which was approved by the Commission on August 26, 1999.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

22.07.025.3360

REPORT OF THE AUDIT DIVISION
ON
TEXANS FOR RUDY IZZARD

Approved August 26, 1999



FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

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22.07.025.2363

REPORT OF THE AUDIT DIVISION
ON
TEXANS FOR RUDY IZZARD COMMITTEE

EXECUTIVE SUMMARY

The Texans for Rudy Izzard Committee (TRI) registered with the Federal Election Commission on November 27, 1995, as Izzard for Congress, the principal campaign committee for Rudy Izzard, Republican candidate for the U.S. House of Representatives from the state of Texas for the Seventeenth District. TRI filed an amended statement of organization to change the name to Texans for Rudy Izzard for the 1998 election cycle.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to TRI at an exit conference held at the completion of fieldwork on May 7, 1999 and later, in an interim audit report. The TRI's responses to those findings are included in this final audit report.

The following is an overview of the findings contained in the final audit report.

Apparent Excessive Contributions - 2 U.S.C. Section 441a(a)(1)(A); 11 CFR Sections: 110.1(b)(1), (3) and (5), 110.1(k), and 110.9(a). TRI received contributions which exceeded the donor's limitations by \$17,325. TRI complied with an interim audit report recommendation by reporting the amounts as debts (since TRI did not have the necessary funds to make immediate refunds) until such time that funds become available to make refunds to the contributors.

Commingling of Funds and Unreported Receipts and Disbursements - 2 U.S.C. Sections: 432(b)(3) and (h); and 434(b)(2); 11 CFR Sections: 103.3(a); and 102.7(d). The Candidate deposited contributions totaling \$13,950 first into his business account before transferring the funds to TRI, and also deposited \$1,650 into the same account which he applied to campaign expenses paid from it. Also disbursements were made from the account on behalf of the campaign totaling \$17,108. These disbursements were not reported. In response to an interim audit report recommendation TRI filed amended reports fully disclosing the disbursements made from the Candidate's account and explained that the use of the business account for some of the transactions was strictly a matter of convenience.

Itemization of Receipts from Political Organizations - 2 U.S.C. Sections: 434(b)(3)(B); and 431(13); 11 CFR Section 102.17(c)(8). TRI failed to itemize as memo entries 29 contributions totaling \$7,675 from political committees relating to a \$6,000 transfer from a joint fundraising committee (New Conservative Leadership Fund). In response to the interim audit report recommendation TRI filed amended schedules itemizing these receipts.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION

ON

TEXANS FOR RUDY IZZARD COMMITTEE

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Texans for Rudy Izzard Committee (TRI), undertaken by the Audit Division of the Federal Election Commission in accordance with the provision of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period from January 1, 1997, through December 31, 1998. The TRI reported a beginning cash balance of \$123, total receipts for the audit period of \$581,426; total disbursements for the audit period of \$572,257; and an ending cash balance of \$234 on December 31, 1998.¹

¹ The figures cited in this report are rounded to the nearest dollar. Totals do not foot due to a reporting discrepancy for ending cash on hand and subsequent beginning cash on hand between two reporting periods.

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C CAMPAIGN ORGANIZATION

TRI registered with the Federal Election Commission on November 27, 1995, as Izzard for Congress, the principal campaign committee for Rudy Izzard, Republican candidate for the U.S. House of Representatives from the state of Texas for the Seventeenth District. TRI filed an amended statement of organization on November 10, 1997 to change the name to Texans for Rudy Izzard for the 1998 election cycle.

On April 7, 1998 TRI filed an amended statement of organization to include, as an affiliated committee, Izzard for Congress - 96. This committee was established to assume the debt from the 1996 campaign.

The Treasurer of TRI during the audit period was Freddy L. Moore. TRI maintained its headquarters in Abilene, Texas.

To manage its financial activity, TRI maintained three principal bank accounts. From these accounts, it made approximately 647 disbursements. Into these accounts TRI deposited contributions from individuals totaling approximately \$409,500, contributions from political committees and political party committees approximating \$112,000, transfers from a joint fundraising committee totaling \$10,000, and loans and contributions from the Candidate totaling \$22,350.

D. AUDIT SCOPE AND PROCEDURES

The Audit staff was unable to test the proper disclosure of debts and obligations. TRI did not maintain an accounts payable or invoice file in an order which would allow the auditors to reference a vendor payment to an invoice. Therefore, timely payments could not be verified and adequate disclosure of obligations could not be tested.

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. Proper disclosure of receipts from individuals, political committees and other entities, to include the itemization of contributions or other receipts when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.C.);

4. Proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. The accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.B.);
6. Adequate recordkeeping for campaign transactions; and
7. other audit procedures that were deemed necessary in the situation. (see Finding II.B.)

This report is based on documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review. Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION

Section 441a(a)(1)(A) of Title 2 of the United States Code states, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Subsection (b) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution mailed is considered made on the date of the postmark.

Section 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- o the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation at 11 CFR §110.1(b)(1);

- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing and if a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution, and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

A review of TRI's receipt records identified 21 contributions from 15 individuals which exceeded the contribution limitations by \$17,325. Eight excessive amounts totaling \$7,750 related to the primary election. The remaining 13 contributions totaling \$9,595 related to the general election. The Audit staff could find no evidence in the TRI's files that any attempt was made to obtain or maintain any written reattribution or redesignation documentation.

At the Exit Conference the Audit staff provided TRI a schedule of the identified excessive contributions and copies of all available supporting documentation (copies of contributor checks, deposit tickets, or entries on contributor lists). The Treasurer and Candidate insisted that there was never any attempt to solicit or knowingly accept excessive contributions and that the campaign staff was instructed to contact any contributor whose contribution was in doubt. In a written response to the Exit Conference the Candidate and Treasurer reaffirmed this contention. They acknowledged that "When a single contributor's aggregate contribution exceeded \$1,000; the campaign staff attributed \$1,000 to the primary and the remainder to the general election. Also, when a contributor and his/her spouse sent \$2,000, the campaign staff attributed \$1,000 to each spouse." With respect to supporting documentation, the Candidate stated "...campaign staff contacted many contributors for clarification of information and allocation instructions. Unfortunately and unknowingly, in many cases, [campaign] staff did not retain written documentation of this correspondence, as required by FEC regulations." The receipt of apparent excessive contributions is attributed to "...a lack of in-depth understanding of FEC rules and regulations by inexperienced campaign staff."

The interim audit report recommended that TRI provide evidence that the contributions were either not excessive, or were reattributed, redesignated or refunded in a timely manner. If funds were not available to make refunds the report recommended that TRI disclose the excessive contributions as refunds owed to the contributors until such time that funds become available.

In its reponse to the interim report, TRI stated:

"...there was never any attempt to solicit or accept excessive contributions. The campaign staff was instructed to and did on numerous occasions contact donors for clarification and allocation instructions. The campaign staff corresponded with these donors by phone, fax, and mail. Unfortunately, campaign staff did not retain written documentation of these

correspondences. None of these individuals contributed more than the aggregate maximum amount for individuals (\$2,000) or couples (\$4,000).

“These contributions appear excessive only because campaign staff did not retain correspondence allocating contributions to the primary or general elections, or to one spouse or the other. There is certainly no pattern of solicitation or receipt of true excessive contributions.”

Section 110.1 (l)(5) of the Commission’s regulations is clear. It states that if a political committee does not retain written records concerning redesignations or reattributions, such redesignations and reattributions shall not be effective and the original designations and attributions shall control. As a result of TRI’s response no adjustment to this finding has been made.

On August 2, 1999 TRI filed amended debt schedules for year end 1997 and 1998 which listed the \$17,325 of excessive contributions as debts owed to the respective individuals.

B. COMMINGLING OF FUNDS AND UNREPORTED RECEIPTS AND DISBURSEMENTS

Section 432(b)(3) of Title 2 of the United States Code states that all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

Section 432(h) of Title 2 of the United States Code states, in relevant part, that each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements) by such committee except by check drawn on such accounts in accordance with this section.

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in part, that all receipts by a political committee shall be deposited into account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer’s receipt, returned to the contributor without being deposited. All deposits shall be made within 10 days of the treasurer’s receipt.

Sections 434(b)(2) and (4) of Title 2 of the United States Codes state, in relevant part, that each report shall disclose the total amount of all receipts and the total amount of all disbursements for the reporting period and the calendar year.

Section 102.7(d) of 11 CFR states, in relevant part, that any candidate who receives a contribution, or makes any disbursement in connection with his campaign,

shall be considered as having received the contribution or made the disbursement as an agent of such authorized committee.

The review of TRI bank reconciliations indicated that not all contributions were deposited directly into a TRI account. The Treasurer's workpapers identified \$1,350 in contributions and a \$300 vendor refund which the Candidate deposited first into his business account. The Candidate acknowledged that he did not transfer these funds to TRI but kept this deposit to offset campaign expenses which had been paid out of the same account². At an interim conference the Candidate identified two other deposits totaling \$13,950 which he deposited first into his business account. The Candidate explained that he copied the checks and deposited them into his business account and promptly transferred the funds and the copies to TRI. The Candidate also made advances to vendors, in kind contributions, a direct contribution (\$7,350), and a loan (\$15,000) to TRI.

The Candidate explained that he deposited the funds into his business account solely for expediency. He stated that when the contributions were received, he was a distance from campaign headquarters and returned directly to his office due to the press of business. That office is an hours drive from the campaign office so he found it more expedient to deposit the checks into his business account, and mail one check and copies of the contributor checks to the campaign office. He also asserted that he did not gain financially from the campaign. To support this contention the Candidate provided bank statements, copies of checks and some invoices from his business account, and credit card statements. He identified expenditures totaling \$64,421 (\$37,550 in 1997 and \$29,834 in 1998) which were incurred on behalf of the campaign. The staff reviewed the available documentation and determined that the Candidate incurred expenses in excess of reimbursements of \$37,841. Of the expenditures, 46 disbursements totaling \$15,271 made from his business account in 1997 were not reported and 10 disbursements totaling \$2,907 made from the same account in 1998 were not reported, resulting in an understatement of receipt and disbursement activity for both calendar years of \$18,178.

A schedule of disbursements not reported was provided to TRI subsequent to the Exit Conference.

The interim audit report recommended that TRI file amended schedules for 1997 and 1998 disclosing as in kind contributions and expenditures the campaign related disbursements made from the business account; file amended summary and detailed summary pages for 1997 and 1998 disclosing the corrected receipts and disbursements; and explain why the deposit of the contributions noted above should not be considered a violation of Title 2 §432(b)(3).

² The Candidate may be referring to a \$1,650.32 tax liability paid from the business account on March 18, 1998. This payment was not reimbursed to the Candidate but was reported as an apparent in kind contribution and expenditure.

In response to the interim audit report, the Candidate states:

“I deposited contribution checks into my business account on only three occasions. Two of these occasions followed lengthy campaign trips during which I was personally given checks by contributors. I returned from these trips directly to my dental office (some sixty miles from the campaign office) and felt it more expedient and safer to deposit the contributor checks into my business account and then forward one check with complete documentation [copies of contributor checks] to the campaign office.

“On the third occasion that I deposited contributor checks into my business account, I did so in order to reimburse my business account for a campaign payroll check written just prior to the receipt of these contributions. The transaction in this instance totaled \$1,650.”

With regard to the disbursements made from the candidates personal funds, TRI identified three disbursements totaling \$1,070 which were unrelated to the campaign. Consequently the amount of the disbursements requiring disclosure has been reduced to 53 items totaling \$17,108.

No other modification has been made to this finding based on TRI's response.

On August 2, 1999 TRI filed amended schedules for both 1997 and 1998 disclosing the disbursements from the business account as in kind receipts and expenditures, and filed amended summary and detailed summary pages materially disclosing the additional activity.

C. ITEMIZATION OF RECEIPTS FROM JOINT FUNDRAISING PROCEEDS

Section 434(b)(3)(B) of Title 2 of the United States Code states, in relevant part, that each report under this section shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code states that the term “identification” means, in the case of a political organization, the full name and address of such organization.

If contributions from political organizations are received through a joint fundraising representative, Section 102.17(c)(8) of Title 11 of the Code of Federal Regulations requires that each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative and shall file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors.

TRI was a participant in the New Conservative Leadership Fund (NCLF), and received two transfers totaling \$10,000. TRI failed to itemize as memo entries on Schedule A, 29 contributions from political committees totaling \$7,675 as gross proceeds from joint fundraising associated with a \$6,000 transfer of net proceeds from the joint fundraising representative.

Subsequent to the Exit Conference the Audit staff provided TRI a list of the contributions requiring itemization.

The interim audit report recommended that TRI file an amended memo Schedule A disclosing the contributions requiring itemization from political committees.

On August 2, 1999 TRI filed an amended schedule disclosing the contributions from political committees.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August, 27, 1999

Freddy Moore, Treasurer
Texans for Rudy Izzard
Armstrong, Backus & Co.
P.O Box 71
San Angelo, Texas 76902-0071

Dear Mr. Moore:

Attached please find the Report of the Audit Division on Texans for Rudy Izzard. The Commission approved the report on August 26, 1999.

The Commission approved Final Audit Report will be placed on the public record on September 3, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Cornelia Riley or Russ Bruner of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

22.07.025.3374

CHRONOLOGY

TEXANS FOR RUDY IZZARD

Audit Fieldwork	April 26 - May 7 1999
Interim Audit Report to the Committee	June 23, 1999
Response Received to the Interim Audit Report	August 2, 1999
Final Audit Report Approved	August 26, 1999

02.07.02.02.3375

22.07.025.3377

